

UNITED STATES DEPARTMENT OF COMMERCE

Patent and Trademark Office

Address: COMMISSIONER OF PATENTS AND TRADEMARKS Washington, D.C. 20231

APPLICATION NO. FIRST NAMED INVENTOR ATTORNEY DOCKET NO. FILING DATE 09/361,189 07/27/99 ENGLISH, JR. С 2149.731 **EXAMINER** PM82/0928 THOMAS P LINIAK KEENAN, J MYERS LINIAK & BERENATO 6550 ROCK SPRING DRIVE ART UNIT PAPER NUMBER SUITE 240 3652 BETHESDA MD 20817 DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

09/28/00

Office Action Summary

Application No. 09/361,189

Applicant(s)

English, Jr. et al

Examiner

Keenan

Group Art Unit 3652



Responsive to communication(s) filed on $2/28/00$, $5/18/00$), and 8/21/00
This action is FINAL .	
Since this application is in condition for allowance except f in accordance with the practice under <i>Ex parte Quayle</i> , 19	35 C.D. 11; 453 O.G. 213.
A shortened statutory period for response to this action is set is longer, from the mailing date of this communication. Failur application to become abandoned. (35 U.S.C. § 133). Exten 37 CFR 1.136(a).	e to respond within the period for response will cause the
Disposition of Claims	
Of the above, claim(s) 22-41	is/are withdrawn from consideration.
☐ Claim(s)	is/are allowed.
X Claim(s) 42-52	
☐ Claim(s)	
☐ Claims	
See the attached Notice of Draftsperson's Patent Draw ☐ The drawing(s) filed on	is approved disapproved. is approved disapproved. ty under 35 U.S.C. § 119(a)-(d). of the priority documents have been lumber) ne International Bureau (PCT Rule 17.2(a)).
	and discourse the second
Attachment(s) Notice of References Cited, PTO-892 Information Disclosure Statement(s), PTO-1449, Paper Interview Summary, PTO-413 Notice of Draftsperson's Patent Drawing Review, PTO-152	
SEE OFFICE ACTION OF	N THE FOLLOWING PAGES

Application/Control Number: 09/361189

Art Unit: 3652

1. Newly submitted claims 22-52 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 22-26, drawn to a dolly, classified in class 254, subclass 8C.
- II. Claims 27-41, drawn to a dolly, classified in class 248, subclass 647.
- III. Claims 42-52, drawn to a dolly, classified in class 414, subclass 458.
- 2. The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention II has separate utility such as a dolly which can be lifted and lowered by means other than a lever portion. See MPEP § 806.05(d).

Inventions I and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention III has separate utility such as a dolly which can be lifted and lowered by means other than a lever portion. See MPEP § 806.05(d).

Inventions II and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention III has separate utility such as a dolly in which the platforms are rigidly attached to the stand. See MPEP § 806.05(d).

Application/Control Number: 09/361189 Page 3

Art Unit: 3652

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination

purposes as indicated is proper.

4. Since applicant has received an action on the merits for the originally presented invention

(claims 42-52, most closely analogous to original claim 21), this invention has been constructively

elected by original presentation for prosecution on the merits. Accordingly, claims 22-41 are

withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b)

and MPEP § 821.03.

5. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the

inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently

named inventors is no longer an inventor of at least one claim remaining in the application. Any

amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the

fee required under 37 CFR 1.17(I).

6. Claims 42-52 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for

failing to particularly point out and distinctly claim the subject matter which applicant regards as

the invention.

Application/Control Number: 09/361189

Art Unit: 3652

The scope of the claims is unclear. Although the preamble of claim 42 appears to be directed to a subcombination dolly for a stand, the positive recitation of the stand (e.g., "affixing said ... platforms to the stand" in claim 42, line 8) implies that a combination of a dolly and a stand is being claimed.

Also in claim 42, lines 11 and 12, it is suggested that "where" be changed to --wherein-or --such that--;

and in lines 12-13, the recitation "and back to said passive position thereby enabling the stand to be moved on the ground" seems to imply that the stand is moved when the dolly is in the passive position, which has been defined as the position in which the stand is resting on the ground, thereby creating an apparent contradiction.

In claim 43, "as opposed to the stand" is not understood.

In claim 44, it is not clear what is meant by "a second pair of rigid elongated members"; this could be interpreted to mean that the pair of members set forth in claim 42 are rigid or that a pair of members which are rigid exist in addition to the pair set forth in claim 42.

In claim 46, "elongted" should be --elongated--.

In claims 47-48, there is no clear antecedent basis for "each wheel ...".

In claim 51, "said first portion" lacks antecedent basis.

In claim 52, "comprises" should apparently be --comprising-- and "said ... rigid ... members" (emphasis added) lacks antecedent basis in claim 42.

Application/Control Number: 09/361189 Page 5

Art Unit: 3652

•,

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or

on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 42-43 and 49 are rejected under 35 U.S.C. 102(b) as being anticipated by Tilton

(US 2,642,590), previously cited by applicant.

Tilton shows a portable workstand which can lift, lower, and transport objects, including a

dolly assembly with a first platform having elongated members 44, crossmember 46, and wheel

system 48, second platform having elongated members 84 and wheel system 88, both platforms

including systems for affixing the platforms to the stand, and coupling means such as members 58

and 64 which can be moved to a position in which the platforms are locked relative to the stand,

wherein the dolly is moved between passive and lift positions by applying pressure to one of the

platforms. Although a power tool is not disclosed as being mounted on the stand, since this is

merely an inferential recitation for which the apparatus of Tilton could clearly be used, and since

no structure, function, or cooperative relationship of the tool is set forth which would preclude

the workstand of Tilton from such use, it is considered a proper anticipatory reference.

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness

rejections set forth in this Office action:

Page 6

Application/Control Number: 09/361189

Art Unit: 3652

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10. Claims 44, 47-48, and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tilton.

Tilton does not show the second platform to include a rigid crossmember.

Nevertheless, it would have been an obvious design expediency for one of ordinary skill in the art to have modified the apparatus of Tilton by adding a rigid crossmember to the second platform, as this would strengthen and rigidify the platform.

Re claims 47-48, the wheels are fixed to the platforms with journaled bearings rather than by bolts extending through the elongated members. Nevertheless, it would have been a simple design choice for one of ordinary skill in the art to have affixed the wheels to the platforms with bolts extending through the elongated members, and thus the substitution thereof would have been obvious.

Re claim 50, although the first platform is not a flat triangular frame, the substitution of such a feature is again considered a mere design expediency.

11. Claims 45-46 and 51-52 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Application/Control Number: 09/361189 Page 7

Art Unit: 3652

12. Applicant's arguments with respect to claims 42-52 have been considered but are moot in

view of the new ground(s) of rejection.

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office

action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is

reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the date of this

final action.

14. Any inquiry concerning this communication or earlier communications from the examiner

should be directed to James Keenan whose telephone number is (703) 308-2559.

jwk

September 27, 2000

JAMES W. KEENAN

Jams Melna